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BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

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AUTHORITY

In re Motion of

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-036

File No.: PL MASP 13.1.3
PD Permit No. KAK 13-036
[Consolidated with PD Permit Nos.
KAK 13-037 and KAK 13-038]

VICTORIA WARD, LIMITED'S MOTION
TO AMEND DEVELOPMENT PERMIT
NOS. KAK 13-036, 13-037, AND 13-038 TO
ALLOW SALE AND/OR RENTAL OF
RESERVED HOUSING UNITS AND TO
EXTEND TIME OF EFFECTIVE PERIOD
OF PERMIT KAK 13-038; DECLARATION
OF DAVID STRIPH;
EXHIBIT 1

In re Motion of

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-037

PD Permit No. KAK 13-037

[caption continued on next page]

In re Motion of

PD Permit No. KAK 13-038

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-038 and to Extend Time
of Effective Period of Permit KAK 13-038

497174-v8

**VICTORIA WARD, LIMITED'S MOTION TO AMEND
DEVELOPMENT PERMIT NOS. KAK 13-036, 13-037, AND 13-038
TO ALLOW SALE AND/OR RENTAL OF RESERVED HOUSING UNITS AND TO
EXTEND TIME OF EFFECTIVE PERIOD OF PERMIT KAK 13-038**

COMES NOW, VICTORIA WARD, LIMITED, ("VWL" or "Petitioner"), by and through its attorneys, WATANABE ING LLP, and pursuant to Hawaii Administrative Rules ("HAR") §15-219-32 and §15-22-118(c), hereby submits this Motion to Amend Development Permit Nos. KAK 13-036, 13-037, and 13-038 ("Permits") to allow the satisfaction of reserved housing requirements through the sale and/or rental of reserved housing units to be developed as part of Development Permit No. KAK 13-038 and to extend the time of the effective period of Development Permit No. KAK 13-038 to allow construction on the 988 Halekauwila Project ("Project") to commence after July 17, 2015 based upon the financing schedule. By this Motion, VWL seeks clarification that reserved housing requirements under the Permits approved by the Hawaii Community Development Authority ("HCDA") may be fulfilled via the sale and/or rental of reserved housing units consistent with HAR Chapter 15-22 ("Vested Rules"). VWL also seeks an extension of the effective period of Development Permit No. KAK 13-038 from July 17, 2015 to July 17, 2017, pursuant to HAR §15-22-118(c) of the Vested Rules, allowing financing to be completed and construction to commence on the Project after July 17, 2015.

By this Motion, VWL is not seeking to change the number of dwelling units and/or reserved housing units, the approximate floor area, height, setbacks, or other approved elements of any specific planned development permit. VWL is not seeking to introduce different land uses, and VWL is not seeking any variances, diminution in buffer or transition areas, changes in landscaping, required yards, or design characteristics already approved under any development permit. Nothing in this Motion will change or affect the number or quality of the reserved housing units that will be constructed under any permit. This Motion seeks only an amended order clarifying that VWL may satisfy its reserved housing requirement by offering reserved housing units for sale and/or rental consistent with the Vested Rules, and to extend the effective period of Development Permit No. KAK 13-038 in order to commence construction after July 17, 2015.

I. PETITIONER

Victoria Ward, Limited
1240 Ala Moana Boulevard, Suite 200
Honolulu, HI 96814
Telephone No. (808)591-8411

VWL is a corporation registered to do business in Hawaii and is the owner and developer of the lands comprising the Permits. VWL is a subsidiary of the Howard Hughes Corporation.

I. BACKGROUND

On January 14, 2009, HCDA approved the Nunc Pro Tunc Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit ("Master Plan Permit") for the Ward Master Plan area, which is owned and controlled by VWL. Pursuant to Condition No. 9 of the Master Plan Permit, VWL was required to "satisfy its reserved housing requirement for the Master Plan area, which shall be equal to

twenty-percent of the total number of residential units proposed for the Master Plan Area, as permitted by the Mauka Area Rules.” The Master Plan Permit was issued under the Vested Rules, which provided that “a planned development containing multi-family dwelling units . . . shall provide at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons . . .” HAR § 15-22-115(a). The Vested Rules specifically allowed the reserved housing units to be for sale or rental.

On April 18, 2013, VWL submitted its development permit application (“Application”) to HCDA for Ward Village, Land Block 5, Project 1 also known as 988 Halekauwila, in accordance with the Master Plan Permit. Under the Application, VWL committed to providing all reserved housing requirements for the Project within the building and noted that the “Project will also satisfy the reserved housing requirements of two concurrent projects on Land Blocks 2 and 3.”

On July 17, 2013, HCDA approved the Permit for the Project, adopting HCDA’s Staff Report Findings, and Recommendations. The Staff Report at page 13 provided in relevant part as follows:

Staff finds that the Project consists of 424 residential units and therefore the reserved housing requirement for the Project is to provide 106 residential units as reserved housing units. The Applicant is proposing to set aside 375 residential units as reserved housing units in the Project. The Project will generate a reserved housing credit of 269 units for the Applicant that could be utilized to fulfill the reserved housing requirements for other planned developments proposed by the Applicant within the KCDD.

The Permit also provided that VWL was required to provide 375 units as reserved housing:

III. RESERVED HOUSING: The Applicant shall comply with the provisions of the Reserved Housing subsection in the Chapter 22, Kakaako Mauka Area Rules (“Vested Rules”). The Project consists of 424 residential units. Twenty percent (20%) of the total residential units, which translates to a total of 106 units, shall be

required to meet the reserved housing provisions of the Vested Rules. **The Applicant shall provide 375 units as reserved housing for sale.** A credit of 269 reserved housing units in excess of the required 106 reserved housing units for the Project is hereby acknowledged. The Applicant shall have the right to utilize excess reserved housing credit to fulfill reserved housing requirements for other planned development projects containing multi-family dwelling units.

Reserved housing shall be designated for residents in the low-income or moderate-income ranges who meet eligibility requirements. The regulated term for reserved housing units for sale shall be established based on unit affordability as set forth in §15-22-186(b) of the Vested Rules and shall begin on the date of issuance of Certificate of Occupancy.

In accordance with the provisions of §15-22-183 of the Vested Rules, the Applicant or its designated representative is permitted to be responsible for advertising, qualifying, and selecting prospective reserved housing buyers subject to Subchapter 7 of the Vested Rules.

Within ninety (90) days from the date of this Development Permit, the Applicant shall prepare and submit to the HCDA Executive Director a program for sale of reserved housing for approval. Such sale of reserved housing shall be consistent with the provisions of §15-22-183 of the Vested Rules.

Delivery of reserved housing shall be required prior to the issuance of the initial Certificate of Occupancy for the Project and shall be secured by the Applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the Authority prior to approval of the initial Building Permit by the Authority.

VWL complied with Development Permit No. KAK 13-038 by submitting a program for sale of reserved housing units to HCDA for review and approval. Accordingly, VWL is in compliance with the permit and all conditions thereunder. Pursuant to HAR §15-22-118, Development Permit No. KAK 13-038 will automatically lapse if the initial building permit authorizing the

construction of the foundation or superstructure is not issued within two (2) years from the date of the permit, which in this case is July 17, 2015.

On August 21, 2013, HCDA approved Development Permit No. KAK13-036 ("Land Block 2, Project 1 Permit") and Development Permit No. KAK 13-037 ("Land Block 3, Project 1 Permit") (collectively, "Land Block 2 and 3 Permits") for projects within Land Blocks 2 and 3 of the Master Plan Permit area. The Land Block 2, Project 1 Permit requires the provision of "forty-five (45) units as reserved housing for sale." The Land Block 3, Project 1 Permit requires the provision of "eighty (80) units as reserved housing for sale." The reserved housing units required for the Land Block 2 and 3 Permits are to be fulfilled through construction of reserved housing units under Development Permit No. KAK 13-038.

III. ARGUMENT

A. Amendment to Permits to Allow Reserved Housing Rental and/or Sale

One of the purposes of a master plan under HAR Chapter 15-22 ("Vested Rules") is "to derive public benefits, such as affordable housing, ...which are generally provided by government and would not otherwise be required from private developers." HAR §15-22-200(b). Accordingly, under the Master Plan Permit and the Permits, VWL committed to providing its required share of reserved housing. In fact, VWL committed to providing upfront a larger number of reserved housing units than initially required by the Permits, which will provide VWL with reserved housing credits that may be utilized for other projects.

Pursuant to HAR §15-22-184 of the Vested Rules, the "adjusted household income" of a qualified person **purchasing** a reserved housing unit "shall not exceed **one hundred forty** per cent of median income" and a person **renting** a reserved housing unit "shall not exceed **one hundred per cent** of median income." "Adjusted household income" means

“total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments but not including business deductions.” Accordingly, reserved housing rental units must be provided for those with **lower household incomes** than the reserved housing units offered for sale.

Additionally, reserved housing rental units are regulated for a period of 15 years. HAR §15-22-185.1(c). This means that those rental units must remain committed for renters whose adjusted household incomes are no more than 100% of the AMI for 15 years. Reserved housing units **offered for sale** are regulated anywhere from 2 years to 10 years, depending upon affordability. HAR §15-22-186(b). Accordingly, there are significant benefits to the community of providing both rental and sale options for reserved housing units, which include ensuring the diversity of housing options in the urban core.

Hereunder, VWL seeks an amended order clarifying that the reserved housing requirements under each of the Permits may be fulfilled through the provision of reserved housing units that are offered for sale and/or rental.

B. Extension of Effective Period of Development Permit No. KAK 13-038

Pursuant to HAR §15-22-118(a), “[a]ny planned development permit granted under the provisions of this subchapter shall automatically lapse if the initial building permit authorizing construction of the foundation or superstructure of the project shall not have been issued within two years from the date of the permit....” Under HAR §15-22-118(c), HCDA “may grant an extension to the effective period of a planned development permit, not to exceed two years, upon the applicant’s request and justification in writing for an extension, provided the request and justification are received by the authority at least one hundred days in advance of the

automatic termination date...and there are no material changes in circumstances which may be cause for denial of the extension.” VWL is requesting an extension of Development Permit No. KAK 13-038 pursuant to the foregoing provisions.

Subsequent to the issuance of Development Permit No. KAK 13-038 on July 17, 2013, VWL commenced design completion work. Considerable coordination with the Honolulu Authority for Rapid Transit (“HART”) was necessary as the rail guideway runs adjacent to the Project. Around the same time, VWL became aware of other projects in the area offering similar housing types, without comparable reserved housing unit restrictions, that had begun to absorb the market. A depth of market study in mid-2014 confirmed VWL’s concerns about the absorption of the market by for sale units types and showed a significant demand for rental reserved housing units. Attached hereto as Exhibit 1 is a compilation of excerpts from the studies conducted.

In addition to the market study, the community and its leaders began pushing for greater rental units in the urban core based upon affordability to a broader distribution of the low and moderate income families and individuals. Based upon the market studies and the community discussion, VWL began investigating the feasibility of developing the Project to include reserved housing rental units. In July 2014, VWL completed and submitted an initial application for HUD financing based on development of reserved housing sale and/or rental units. Preliminary responses were positive, and VWL continued the HUD due diligence process, working with Prudential Huntoon Paige Associates, LLC on obtaining HUD financing. VWL has been advised that the earliest the loan could close is the week of August 24, 2015, and that construction cannot commence prior to the loan closing. For this reason VWL is seeking to extend the effective period of Development Permit No. KAK 13-038. Under the amended order

and extension, VWL is committed to providing all of the reserved housing units identified in the Permits and believes that this amendment and extension will significantly improve the unit types being offered.

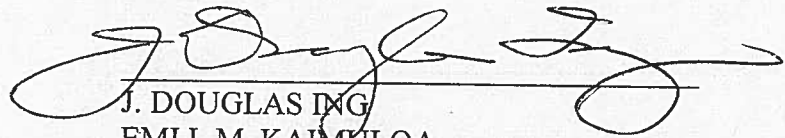
V. HEARING

Pursuant to HAR § 15-22-118(c), HCDA “shall hold a public hearing on an extension request if a public hearing had been held on the planned development permit or any variance or modification granted as part of the planned development permit process.” Public hearings were held on June 19, 2013, July 17, 2013, and August 21, 2013 on the Permits. Accordingly, a public hearing is required for this Motion.

VI. CONCLUSION

Based upon all of the reasons asserted herein and any reasons appearing of record, VWL respectfully requests that HCDA issue an order consistent with the foregoing.

DATED: Honolulu, Hawaii, February 23, 2015.


J. DOUGLAS ING
EMI L.M. KAIMULOA
Attorneys for Petitioner
VICTORIA WARD, LIMITED

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re Motion of

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-036

File No.: PL MASP 13.1.3
PD Permit No. KAK 13-036
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KAK 13-037 and KAK 13-038]

DECLARATION OF DAVID STRIPH

In re Motion of

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-037

PD Permit No. KAK 13-037

In re Motion of

VICTORIA WARD, LIMITED

For an Order of Amendment to Development
Permit No. KAK 13-038 and to Extend Time
of Effective Period of Permit KAK 13-038

PD Permit No. KAK 13-038

DECLARATION OF DAVID STRIPH

I, DAVID STRIPH, hereby declare as follows:

1. I am the Senior Vice President of the Howard Hughes Corporation. Victoria Ward, Limited ("VWL") is a subsidiary of the Howard Hughes Corporation.
2. I make this declaration based upon personal knowledge and based upon my review of records in the above-entitled matter.
3. This declaration is made in lieu of an affidavit pursuant to the Rules of the Circuit Courts of the State of Hawaii.
4. This Motion seeks authorization for VWL to satisfy its reserved housing requirements under Development Permit Nos. KAK 13-036, 13-037, and 13-038 ("Permits") by providing reserved housing units for sale and/or for rental, and to extend the effective date of Planned Development Permit No. KAK 13-038 beyond July 17, 2015.
5. Public hearings were held on the Permits on June 19, 2013, July 17, 2013, and August 21, 2013. The Hawaii Community Development Authority ("HCDA") approved Development Permit No. KAK 13-038 on July 17, 2013 and approved Development Permit Nos. KAK 13-036 and 13-037 on August 21, 2013.
6. Development Permit No. KAK 13-038 requires the provision of 375 reserved housing units "for sale". Development Permit No. KAK 13-036 requires the provision of 36 reserved housing units "for sale" and Development Permit No. 13-037 requires 80 reserved housing units "for sale."
7. Subsequent to the issuance of Development Permit No. KAK 13-038 on July 17, 2013, VWL commenced design completion work. Considerable coordination with the Honolulu

Authority for Rapid Transit ("HART") was necessary as the rail guideway runs adjacent to the Project.

8. Around the same time, VWL became aware of other projects in the area offering similar housing types, without comparable reserved housing unit restrictions, that had begun to absorb the market. A depth of market study in mid-2014 confirmed VWL's concerns about the absorption of the market by for sale units types and showed a significant demand for rental reserved housing units. Attached hereto as Exhibit 1 is a true and correct compilation of excerpts from the studies conducted.

9. In addition to the market study, the community and its leaders began pushing for greater rental units in the urban core based upon affordability to a broader distribution of the low and moderate income families and individuals.

10. Based upon the market studies and the community discussion, VWL began investigating the feasibility of developing the Project to include reserved housing rental units.

11. In July 2014, VWL completed and submitted an initial application for HUD financing based on development of reserved housing sale and/or rental units. Preliminary responses were positive, and VWL continued the HUD due diligence process, working with Prudential Huntoon Paige Associates, LLC on obtaining HUD financing.


12. VWL has been advised that the earliest the loan could close is the week of August 24, 2015, and that construction cannot commence prior to the loan closing.

13. For these reasons, VWL is seeking to amend the Permits to allow rental and/or sale reserved housing units and to extend the effective period of Development Permit No. KAK 13-038.

14. VWL is committed to providing all of the reserved housing units identified in the Permits and believes that this amendment and extension will significantly improve the unit types being offered and will help fulfill unmet needs in the urban Honolulu housing market.

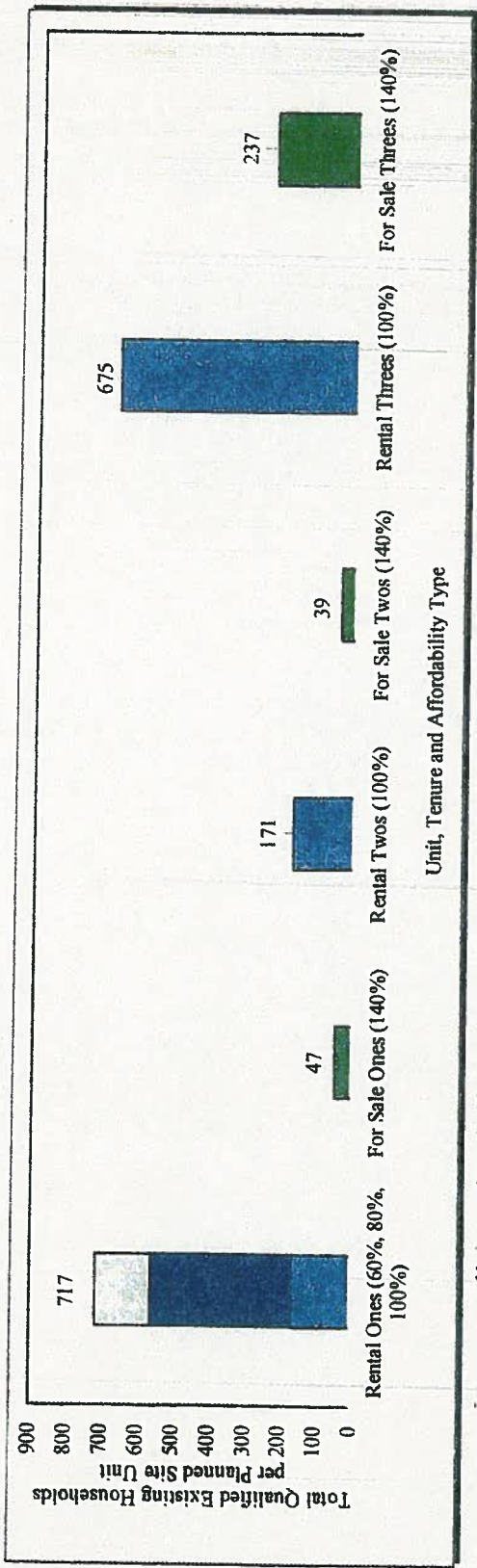
I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE
AND CORRECT.

DATED: Honolulu, Hawaii, 2-23-15.



DAVID STRIPH

EXHIBIT 1



THE CONCORD GROUP